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Schaber, Peter

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Human Rights and Human Dignity: A Reply to Doris Schroeder

Peter Schaber

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Abstract According to Doris Schroeder, the view that human rights derive from human dignity should be rejected. She thinks that this is the case for three different reasons: the first has to do with the fact that the dominant concept of dignity is based on religious beliefs which will do no justificatory work in a secular society; the second is that the dominant secular view of dignity, which is the Kantian view, does not provide us with a justification of human rights, i.e. rights *all humans* have; and the third reason has to do with the fact that dignity is understood in too many different ways to provide us with a justification of human rights. It is argued in this paper that none of these reasons for separating human rights from human dignity is convincing. It is true, it will be argued, that some accounts of dignity will not be successful in justifying human rights. But there is no reason to assume that no account of human dignity is capable of doing this. In the final part of the paper a concept of human dignity is presented that could indeed provide us with a justificatory basis for human rights.

Keywords Dignity · Human rights · Kant

The final declaration of the second International Conference of Human Rights, which has been signed by 197 states, says that “all human rights derive from the dignity and worth inherent in the human person” (Clapham 2006: 539). The International Covenant on Civil and Political Rights of 1966 tells us the same. And philosophers such as Jeremy Waldron (2009: 2) or Alan Gewirth (1992) share this view. They think that rights humans have as humans are based on human dignity. Human rights can be justified within a framework provided by the concept of dignity; and that we have these rights, *because* we have dignity. Various authors disagree with this view. One such author is Doris Schroeder, who argues in her paper “Human Rights and Human Dignity” (Schroeder 2012) that it should be rejected. According to her, those who think that human rights are universal rights “are better off looking for alternative frameworks to justify human rights than relying on the concept of dignity” (Schroeder 2012: 334). Whatever the basis of human rights is, Schroeder argues, it is not human dignity.

P. Schaber (✉)

Centre for Ethics, University of Zurich, Zollikerstrasse 117, 8008 Zurich, Switzerland
e-mail: schaber@philos.uzh.ch

Schroeder thinks that this is the case for three different reasons: (i) The dominant concept of dignity is based on religious beliefs which will do no justificatory work in a secular society; (ii) the dominant secular view of dignity, which is the Kantian view, does not provide us with a justification of human rights, i.e. rights *all humans* have; and (iii) the fact that dignity is understood in too many different ways to provide us with a justification of human rights.

In this article, I will argue that none of these reasons for separating human rights from human dignity is convincing. It is true, it will be argued, that some accounts of dignity will not be successful in justifying human rights. But there is no reason to assume that no account of human dignity is capable of doing this. In the final part of the paper I will propose an outline of what might become a plausible concept of human dignity, one which could provide us with a justificatory basis for human rights.

1 Religious Understanding

Let us start with the first reason Schroeder puts forward for separating human rights from human dignity. The concept of dignity is, Schroeder argues, deeply imbued with religious significance. She cites various accounts according to which dignity is something that is given to humans by God. But to tell people that all humans have certain rights because God has given humans dignity, Schroeder continues, “may no longer satisfy the majority” (Schroeder 2012: 328). Thus, Schroeder concludes, dignity understood in a religious sense cannot provide us with a justificatory basis for human rights in the secular society in which we live.

Should we accept this argument? There are different things to be said here: First, it is just not true that a concept of human dignity which is based on religious beliefs cannot justify human rights in a secular society. Such a concept would probably not convince the non-believers, but this does not mean that it could not do the normative work it is supposed to do. It could and would do so, if the religious understanding of dignity was appropriate. The concept would then provide us with the right reasons as to why human beings have certain rights. Non-believers might disagree with this justification; but if the relevant religious beliefs were true, they would simply be wrong. The fact that the non-believers were not convinced would be no reason to reject dignity as a justificatory basis for human rights. It would only reveal the cognitive limits of the non-believers.

Second, it is not clear whether the dominant view of human dignity really is, as Schroeder claims, a religious one. Some are, of course, convinced that dignity is given to humans by God. Yet even within such a framing, what it means to have dignity can nevertheless be understood in purely secular terms. Take, for instance, Leon Kass’ understanding of dignity (Kass 1998, 2009). Kass thinks that dignity is God-given (2009: 317). This is a claim about the source of dignity. Kass also holds a view about the meaning of dignity, however, to share this view one does not need to believe in God. Kass thinks that having dignity means having a life that is sacred. As he puts it: “To regard life as sacred means that it should not be opposed, violated, or destroyed, and, positively, that it should be protected, defended, and preserved” (Kass 1998: 203). This is, according to Kass, the meaning of human dignity, and, interestingly enough, he spells it out in purely secular terms (having dignity means living a life which is to be protected etc.).

One may certainly question whether this is an adequate understanding of dignity; but those who hold this concept to be convincing need not necessarily have religious beliefs. They could argue, for instance, that human life is sacred due to the fact that human beings are pursuing their own good. The rights which humans have, they might continue, are there

to protect, defend, and preserve human life. All forms of violation and destruction of human life should therefore be excluded. This is what it means to say that human life is sacred, and this is what human rights are all about. If there is anything wrong with this justification, it is not the fact that it relies on a religious understanding of dignity. It would rather be the fact that human life is just not sacred.

Third, even if Schroeder is right, and a religious understanding of dignity does not provide us with a justification of human rights in a secular society, it still does not follow that dignity should be separated from human rights. This is because any religious understanding of dignity is just one among many other understandings of dignity. Schroeder mentions five different concepts of human dignity of which only one is based on religious convictions (Schroeder 2012: 332). If there is a problem with the latter, then those who look for a dignity foundation of human rights could rely on one of the other non-religious understandings of dignity.

2 Kant's cul-de-sac

In her paper, Schroeder addresses the secular concept of dignity proposed by Kant. According to Kant human beings have dignity because they as rational creatures have the capacity for moral self-legislation. Schroeder argues that this understanding of dignity may do some justificatory work with regard to human rights, but that it will not be able to show that *all* human beings have certain rights. As she puts it: "This reasoning would exclude huge numbers of human beings from the relevant realm, small children to begin with, but at an extreme, everybody who is asleep" (Schroeder 2012: 330).

But it is not clear that Kant's view implies that only those who actually exercise their rational capacities have dignity. Those who are asleep still have the *capacity* for moral self-legislation; and this, for Kant, is all that is needed to have dignity. One need not actually be exercising the capacity to be a being with dignity. With regard to small children Schroeder admits that the fact that they are going to be beings with dignity could make a moral difference. "Children are not born *in* the state of rational self-legislation, but are born *to* it" (Schroeder 2012: 330).

That said, it is, of course, true that a small number of human beings will never join the club of moral self-legislators. Those, for instance, who are in a "permanent vegetative state" (Schroeder 2012: 330) will never be members of the dignity community. And this is why Schroeder thinks that a Kantian attempt to justify human rights fails. It fails, because it cannot justify that certain rights are rights *all* humans have. Is this a reason to reject Kant's view of dignity? It may be true that a Kantian justification does not provide all human beings with rights, and this seems to be incompatible with what we find in the official declaration of human rights, namely that certain rights protect all members of the human family (Preamble). This, however, does not seem to be a decisive reason to reject Kant's concept of dignity. First, who is a member of the human family? Are zygotes members of the human family? Do embryos belong to it? What is meant by "all humans" is a contested issue. In light of these disagreements as to who is a member of the human family and thus who is protected by human rights, it is not clear that Kant's view fails the adequacy test which is formulated by an official interpretation of the human rights declaration. For there is no such interpretation.

However, Schroeder may then argue, that despite these disagreements about the moral status of prenatal human beings, there is no doubt that those who are in a permanent vegetative state have human rights. But should the Kantian view of dignity be rejected, because it does not account for these individuals?

I think that people in a permanent vegetative state should be cared about. But do they have the rights which adults have? They might have a moral status which does not give rise to rights; and this might be due simply to the fact that it would make no sense to ascribe rights to beings who are in principle unable to exercise them. Or one might say that they do have rights, but not the rights other human beings have. Dignity might be the basis for the rights of those who have the capacity for moral-self-legislation, while something else might be the basis of the rights of those who are in a permanent vegetative state.

But this view, one might argue, cannot account for the idea that human rights are those rights humans have as *humans*. If we followed the Kantian proposal, humans have certain rights in virtue of their capacity for moral self-legislation. The question is whether the fact that human beings do not have certain rights in virtue of being members of the human species is a special problem for a dignity foundation of human rights, as opposed to any possible foundation of human rights. In any case, the idea that humans have certain rights as humans needs further explanation. Why should being human be a reason for having certain rights? What is it about being human that provides us, for instance, with a reason to assign a right not be enslaved or degraded or to have an adequate standard of living? This needs spelling out, because one does not get any of these rights, just by referring to the fact that a being is human. One can only justify the rights humans have as humans by referring to properties which are essential properties of human beings; it is not enough, simply to refer to the fact that they are human beings.

But then it is unlikely that the justificatory work will be done by properties shared by all beings who are human in a biological sense. It might be the case that we all share certain genes. But do we have a right not to be degraded, because we have these genes? This is highly implausible. The property we need to share has to be relevant for the justification of human rights. This property has, however, not yet been identified. And this is the reason why all justifications of human rights which refer to our humanity are unable to account for the idea that *all humans* have certain rights. Hence, all these foundations share the difficulty which any account based on human dignity must face: they do not manage to identify a property which all human beings share and which plausibly justifies human rights.

3 The Many Meanings of Dignity

The third reason for which Schroeder rejects any dignity foundation of human rights is that the concept of dignity has different meanings. Schroeder notes that there are at least five distinct meanings: (1) Traditional catholic dignity, (2) Kantian dignity, (3) aristocratic dignity, (4) comportement dignity and (5) meritorious dignity (Schroeder 2012: 331; see also Schroeder 2010). Which one should be used to justify human rights? Should we go for Kantian dignity? Or aristocratic dignity? Meritorious dignity? Comportement dignity? It seems, Schroeder argues, that dignity can be understood in too many different and incompatible ways to provide us with a foundation for human rights. So why, she asks, should we bother about the meaning of this term at all? Should we not rather look for an alternative foundation for human rights?

There are indeed various understandings of dignity. But there are various understandings of other normative and descriptive concepts as well. There are various understandings of justice, fairness, autonomy, respect for persons and so on. In none of these contexts would disagreement about the meaning of the relevant concepts be accepted as a reason for giving up the concept; they would more likely be seen as a good reason for continuing the discussions about the right understanding of the term in question. How does the concept of dignity differ in this regard from other contested concepts? Is there anything special about the concept of dignity when it comes to different understandings of the concept?

Schroeder, of course, raises an important question, in asking how human rights can be justified by appeal to dignity, given that there are different concepts of dignity. The natural thing to say in response is that we should appeal to the concept of dignity that provides us with the best possible justification of core human rights. In other words, one should ask, how dignity must be understood, if it is supposed to give us reasons for assigning to humans the right not be enslaved, the right not be degraded and the right to an adequate standard of living. Is there a way of conceiving of dignity that provides us with reasons for such rights? This is what I take to be the criterion for an acceptable account of human dignity: an adequate understanding of dignity has not just to account for the core human rights; it has also to account for the paradigmatic forms of the violation of human dignity. It has to be able to explain why, for instance, the humiliation of people is a violation of dignity, or why discriminating against people violates dignity. That is to say, the adequate understanding of dignity is the one that fits best the normative framework within which the concept of dignity is to be found.

Some understandings of dignity might not be suitable for this exercise. If so, they must be rejected as a foundation of human rights. And it might even turn out that no concept of dignity is available which could provide us with such reasons; the concept of dignity would then indeed be useless for the justification of human rights. Kant's concept of dignity, however, is one which provides us with reasons for rights we have as potential or actual rational self-legislators. My claim is that the Preamble to the Universal Declaration addresses only the thought that "the recognition of the inherent dignity ... of all members of the human family is the foundation of freedom, justice and peace in the world." What is meant here has to be explained in ways which meet the requirements mentioned above.

4 Dignity as Normative Authority

Here is an idea of how this could be done. The following remarks should not be understood as a complete theory of human dignity. They are nothing more than an outline of what could become a plausible theory of human dignity. I sketch this outline here simply to provide the reader with a positive idea of how the concept of human dignity could be the justificatory basis of human rights, something which is, according to Doris Schroeder, impossible. The following should hint at a concept of dignity which might be able to ground human rights, and which is not faced with the three general objections Schroeder puts forward.

Dignity is a normative concept. Whatever dignity precisely means, it refers to a property that has moral importance. The dignity of humans is not something that must merely be accepted; rather it is something that calls forth certain attitudes and reactions. Dignity must be respected or protected or promoted. The violation of the inherent dignity of humans is a form of severe wrongdoing and is not just the violation of a particular right human beings have. It is rather related to the moral status of human beings.¹

Acts of degradation or humiliation are paradigm violations of dignity.² As Waldron puts it, "A good account of human dignity will ... generate an account of the ban on humiliating and degrading treatment."³ Acts of degradation and humiliation do not just impair the interests or the autonomy of the victims: they strike at the moral status itself. By acts of

¹ John Tasioulas also sees human dignity as a moral status humans have: "The idea of human dignity is the idea of an intrinsically valuable status that merits our respect" (Tasioulas 2012: 14).

² Avishai Margalit was the first to try to explain the concept of human dignity in terms of nonhumiliation; see Margalit (1996: 84).

³ Waldron (2012), 22.

degradation we treat others as if they had no say, as if we had the right to treat them in whatever ways we please. The violation of dignity consists in treating others as if they had no normative authority over themselves and over how they are treated. I think that it is this normative authority which is meant by dignity and which is paradigmatically disrespected by acts of degradation and humiliation.⁴ By treating individuals in this way one denies the existence of any *normative authority* on their part.⁵ It seems to me that this idea of normative authority is more central to the understanding of human rights than other things such as basic needs or interests. “Normative authority”, in the sense relevant to the present discussion, is the authority to do what one wants with regard to whatever falls within the purview of one’s authority. It is not simply the *capacity* to do what one wants, but the *right* to do so, and so encompasses the right not to be obstructed in one’s actions as carried out within the sphere of one’s authority.

What is it that falls under our normative authority? The obvious answer is: anything that is important in my life—for example, who I live with, who I marry, what profession I choose, what projects I take up, etc. That human beings have normative authority over these things means that they have the right to determine who they live with, who they marry, etc., and that they may not be hindered in their enjoyment of these rights. Various rights included in the Universal Declaration of Human Rights protect exactly this normative authority: the right to freedom and security of the person (Art. 3), the right not to be held in slavery or serfdom (Art. 4), the right not to be subjected to cruel, inhuman or degrading treatment (Art. 5), the right to be recognized as a person before the law (Art. 6), the right to marry and to form a family (Art. 16), the right to religious freedom and the freedom of opinion (Art. 18), to name just a few.

Upon closer examination it becomes clear that it is not just liberty rights which protect the normative authority of human beings, but also social and cultural human rights such as the right to an adequate standard of living (Art. 25), the right to a basic education (Art. 26), and the right to freely participate in the cultural life of the community (Art. 27). Take, for example, the right to adequate living conditions, including food, clothing, housing, medical care and necessary social services, and the right to security in the event of unemployment, sickness, invalidity and widowhood (Art. 25.1): These rights protect basic needs in the absence of which one cannot lead a minimally good life, but the attribution of these rights is not justified simply on the grounds that these are needs that must be accommodated. Rather, human beings have the right to adequate living conditions in order to be able to exert their normative authority: human beings should be able to live a life as they please, in so far as this is possible, but this requires that they possess certain goods in the absence of which their scope for expressing their authority would be severely curtailed. For example, someone with no access to nutrition or water would be unable to exert her normative authority. Normative authority can only be exerted when there are *acceptable options* from which to choose. If this is true, it could be the exercise of our normative authority that is protected by certain rights such as the right to liberty and security, the right not be held in slavery or servitude, the right not to be tortured and degraded, the right to an adequate standard of living and the other rights mentioned above.

⁴ Normative authority should not be mistaken for “normative agency”, a term coined by James Griffin (Griffin 2008: 45). According to Griffin, normative agency consists in the capacity to choose and pursue what one considers right. It is a capacity and—unlike normative authority—not a right. This capacity is not necessarily affected when human beings are subject to degrading behavior. After such degradation one may well be able to live one’s life as one sees fit.

⁵ Waldron seems to have something similar in mind when he writes: “The ban on degrading treatment can be read as requiring that people must be permitted to present themselves ... with a modicum of self-control and self-possession” (Waldron 2012: 22).

Schroeder's objections do not apply to the proposed concept of dignity: (i) It is not based on religious beliefs, (ii) it is not supposed to account for rights which all humans have, and (iii) it has a clear meaning. And it might help not just to determine the content of human rights; it might also provide us with the reasons we have to assign rights to humans at all. These reasons would determine the content of the rights. In order to know what a right to freedom of opinion, for instance, is, we have to know the reasons for why we have such a right in the first place. The reasons why we have rights tell us what the rights are all about. Thus, such a concept of dignity would not just inform us about the content of rights, it would also be a justification of human rights. It would help to identify the rights which human beings have. This substantiates the idea mentioned at the beginning of this paper, that all human rights derive from the dignity and worth inherent in the human person.

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References

- Clapham A (2006) Human rights obligations of non-state actors. Oxford UP
- Gewirth A (1992) Human dignity as the basis of rights. In: Meyer M, Parent WA (eds) The constitution of rights. Human dignity and American values. Cornell UP, 10–28
- Griffin J (2008) On human rights. Oxford UP
- Kass L (1998) Death with dignity and the sanctity of life. In: Uhlmann M (ed) Last rights? Assisted suicide and euthanasia debated. Washington, 199–222
- Kass D (2009) Defending human dignity. In: Pellegrinon, E.D. et al (eds) Human dignity and bioethics. University of Notre Dame Press, 297–33
- Margalit A (1996) The decent society. Harvard UP
- Schroeder D (2010) Dignity—one, two, three, four, five still counting. *Camb Q Health Care Ethics* 19(1):118–125
- Schroeder D (2012) Human rights and human dignity: an appeal to separate the conjoined twins. *Ethical Theory Moral Pract* 15:323–335
- Tasioulas J (2012) Human dignity and the foundation of human rights, Ms
- Waldron J (2009) Dignity, rank and rights, the tanner lectures at UC Berkeley, NYU School of Law, Public Law Research Paper No 09–50, <http://ssrn.com/abstract=1461220>
- Waldron J (2012) Dignity, Rank, and Rights. Oxford UP